IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (MAIN) NO. 268 OF 2006

SHRI AJAY D. NAIK, MARGAO GOA. ....Appellant

Versus

SUB DIVISIONAL MAGISTRATE/DEPUTY COLLECTOR AND ANR., ...Respondents

Mr.D. Pangam, Advocate for the Applicant.
Ms. W. Coutinho, Public Prosecutor for the Respondent No.1.
Mr. Aires Rodrigues, Advocate for the Respondent No.2.

Coram:- N. A. BRITTO, J.

Date:- 16th August, 2006

P.C.:-

Heard Mr. D. Pangam, the learned Counsel on behalf of the applicant. Ms. W. Coutinho, the learned Public Prosecutor on behalf of respondent no.1 and Mr. Aires Rodrigues, the learned Counsel on behalf of respondent no.2.

In Order dated 12-7-2006, it was observed that prima facie, it does not appear that the impugned Order was without jurisdiction. The said observation was made on the basis of the statement made on behalf of the applicant that the impugned Order came to be made before any conditional order was made by the learned S.D.M. in proceedings under Section 133 of the Code of Criminal Procedure, 1973.

The learned Public Prosecutor Ms. W. Coutinho upon perusal of the records and proceedings of the learned S.D.M. makes a statement that there was no conditional order made before the impugned Order was passed directing the applicant to hand over one key of the locks of both the gates to respondent no.2. It is submitted on behalf of respondent no.2 by Mr. Aires Rodrigues, the learned Counsel that pursuant to the impugned Order the keys were already handed over to respondent no.2, before the order of this Court dated 12-7-2006 was communicated. Since

the impugned Order lacks inherent jurisdiction in that the impugned Order was made prior to making conditional order, the impugned Order deserves to be set aside. Consequently, the same is hereby set aside.

The learned S.D.M. will be at liberty to pass appropriate orders, in accordance with law, on the application dated 15-6-2006 filed by respondent no.2.

With the above observations, the petition is disposed of. Needless to say, the stay granted in terms of prayer (b) is hereby confirmed.

N. A. BRITTO, J.

RD.